

1 **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 **ROBERT GUTHRIE,**)
4 **Appellant,**) **PCHB No. 92-110**
5))
6 **v.**) **FINAL FINDINGS OF FACT,**
7 **SPOKANE COUNTY AIR**) **CONCLUSIONS OF LAW**
8 **POLLUTION CONTROL**) **AND ORDER**
9 **AUTHORITY,**)
10))
11 **Respondent.**)
12)

13 This matter came before the Pollution Control Hearings Board ("Board") in an appeal
14 filed on June 16, 1992, by Robert Guthrie ("Guthrie"), of a Notice of Disposition issued by
15 Spokane County Air Pollution Control Authority ("SCAPCA") on May 28, 1992. A hearing
16 was held in Spokane on May 20, 1993. Board Member Richard Kelley conducted the hearing,
17 during which witnesses provided sworn testimony and exhibits were admitted. Appellant
18 Robert Guthrie represented himself, and SCAPCA was represented by Thomas Kingen, of
19 Perkins, Cole. Caryn Winters of C W. Court Reporting recorded the proceedings. Board
20 Chairman Harold Zimmerman and Member Robert Jensen later listened to the tape recording
21 of the proceedings and reviewed the exhibits. Having considered all the evidence in the case,
22 the Board makes the following:

23 **FINDINGS OF FACT**

24 **I**

25 On February 23, 1992, Fire District #8 informed SCAPCA Air Quality Specialist Mike
26 Conley that they had received complaints about smoke from a fire on the Northeast corner of
27 the intersection of Freya and Palouse Highway. He visited the site at approximately

28 **FINAL FINDINGS OF FACT.**
29 **CONCLUSIONS OF LAW AND ORDER**
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1 10:00 a.m. and found Guthrie feeding an open fire of slash vegetation approximately 15 feet in
2 diameter and 6 feet high.

3
4 II

5 Guthrie owned the property, on which he was engaged in building houses for sale.

6 III

7 The fires contained wet natural vegetation and sticks, and emitted a considerable
8 volume of smoke, affecting the nearby residences. No illegal materials were observed in the
9 fire

10 IV

11 Guthrie's contract employee, Bart Nelson, had had a previous visit at the site from the
12 Spokane City Fire Department on February 6, at which time the firefighter instructed Nelson
13 to only burn building materials in a barrel, and expressed no objection to burning slash in the
14 future, but advised Nelson to contact Fire District #8 if he intended to burn slash.

15 V

16 Conley instructed Guthrie to extinguish the February 23rd fire, which he did not do.
17 Conley then left the site.

18 VI

19 At 10:51 a.m., a Fire District #8 Battalion Chief and truck arrived and found the fire
20 still burning. They told Guthrie they would extinguish the fire. Guthrie left the site without
21 waiting to see if the firefighters did extinguish the fire. They did not do so, and opted to allow
22 the fire to burn out. Guthrie did not visit the site again until February 26.

23 VII

24 On February 26, at approximately 1:15 p.m., Conley visited the site again, and found
25 the fire still burning.

26 FINAL FINDINGS OF FACT.
27 CONCLUSIONS OF LAW AND ORDER
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VIII

On February 28, 1992, Conley issued Field Notice of Violation #5040 to Guthrie for violation of SCAPCA Regulation 1, Section 6.01 regarding open burning, and 6.04 regarding odors and nuisances, both on February 23, he also issued Field Notice of Violation #5041, for violation of Section 6.01 on February 26.

IX

On April 29, 1992, SCAPCA issued Guthrie Notice and Order of Assessment of Civil Penalty #5040, with a penalty of \$500, and Notice and Order of Civil Penalty #5041, also with a penalty of \$500.

X

On May 6, 1992, Guthrie wrote to SCAPCA asking for reconsideration of the penalties. On May 28, 1992, Mabel Caine, Compliance Administrator for SCAPCA, issued a Notice of Disposition to Guthrie, which offered to suspend \$500 of the \$1000 total penalty if Guthrie paid the \$500 within 30 days and had no future violations. Guthrie declined to accept this proposal.

XI

On June 16, 1992, Guthrie filed an appeal of the Notice of Disposition with the Pollution Control Hearings Board.

XII

Guthrie testified he had lived in Spokane most of his life, and had engaged in the business of building houses for several years.

XIII

Guthrie further testified he had no intent to violate the SCAPCA regulations, and had no knowledge of having done so, or even knowledge that the fire was still burning on

1 February 26.

2
3 XIV

4 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such
5 Based on the preceding findings of fact, the Board makes the following:

6 CONCLUSIONS OF LAW

7 I

8 The Board has jurisdiction in this matter under RCW 43.21B.110.

9 II

10 Guthrie, as owner of the property, is strictly liable for violations of the Clean Air Act
11 occurring on his property.

12 *The Washington Clean Air Act is a strict liability statute. Acts violating*
13 *its implementing regulations are not excused on the basis of intent. Moreover,*
the duty to comply cannot be delegated away by contract. RCW 70.94.040.

14 Neither reliance on information from the Fire District nor reliance on the Fire District to
15 extinguish the fires removes this liability.

16 III

17 The stated intention of the Fire District #8 crew to extinguish the fire on February 23 is
18 a mitigating factor on Guthrie's behalf in relation to the February 26 violation. However, it
19 must be noted that the affidavit of Battalion Chief Jim Oberst was admitted, without objection,
20 as hearsay, and respondent's attorney had no opportunity to cross-examine Mr. Oberst; we
21 therefore attach limited weight to the statement. On the same point, we find Guthrie was
22 negligent in leaving his property while a fire continued to burn, and in not visiting the property
23 until three days later, despite living nearby.

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25
26
27 FINAL FINDINGS OF FACT.
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1
2 IV

3 SCAPCA Regulations having been properly adopted by the board of SCAPCA on June
4 9, 1969, with the required public notice, this Board finds that Guthrie had sufficient notice of
5 the burning regulations.

6 V

7 The activity in which Guthrie was engaged, construction of houses for sale, is a
8 commercial activity, and not entitled to any exemption for residential burning under SCAPCA
9 regulations.

10 VI

11 The size of the fire exceeded the maximum allowable as a "small fire" in SCAPCA
12 Regulation I Section 6.01(G)(2). "Small fire" is defined in Section 1.04 (NN) as:

13 *Small fire means a fire not more than four feet in diameter or more than*
14 *three feet high.*

15 VII

16 SCAPCA applied reasonable guidelines to reduce the amount of the fine from the
17 statutory maximum of \$10,000 per day to \$500 per day.

18 VIII

19 Guthrie raised the possibility of an objection to proceeding with the hearing because he
20 alleged he had not received the full access to SCAPCA records required by RCW 42.17.260.
21 The Presiding Officer admitted, as Board exhibits, the letters exchanged between Guthrie and
22 SCAPCA attorney Kingen on that point, and offered, on the record, to continue the hearing.
23 Guthrie declined the offer of a continuance, and, on the record, twice waived any right to
24 object to the Board's proceedings on the ground of insufficient access to public records.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
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IX

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.
Based on the preceding findings of fact and conclusions of law, we issue the following:

FINAL FINDINGS OF FACT.
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ORDER

The Notice and Order of Assessment of Civil Penalty #5040, with a penalty of \$500, issued by SCAPCA to Robert Guthrie on April 29, 1992, is affirmed.


The Notice and Order of Assessment of Civil Penalty #5041, issued by SCAPCA to Robert Guthrie on April 29, 1992, is affirmed as to the violation found, and the penalty of \$500 is reduced to \$300.

Done this 15th day of June, 1993, in Lacey, Washington.

POLLUTION CONTROL HEARINGS BOARD


RICHARD C. KELLEY, Presiding


HAROLD S. ZIMMERMAN, Chairman


ROBERT V. JENSEN, Attorney Member

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FINAL FINDINGS OF FACT,
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